REMARKS

Claims 1, 3-14, and 19-31 are present in this application. Claims 1, 7, and 19 are independent claims.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

§ 112, second paragraph

Claims 1, 3-14, and 19-31 have been rejected under 35 U.S.C. 112, second paragraph.

Applicant has amended the claims to clarify the specific "data identifier." Applicant requests that the rejection be reconsidered and withdrawn based on the claims as amended.

§ 103(a) Rejection – Ellis '831

Claims 1, 3-13 and 31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Application Publication 2004/0117831 (Ellis '831). The rejection relies on references that are incorporated in the disclosure of Ellis '831, which include,

U.S. Application Publication 2005/0028208 (Ellis '208)

U.S. Application Publication 2003/0149988 (Ellis '988)

U.S. Application Publication 2005/0204388 (Ellis '388)

Independent claims 1 and 7, as well as dependent claims, have been amended. Applicant traverses the rejection based on the claims as amended.

With respect to claim 1, the Office Action admits that, "E831 does not explicitly disclose the portable device stores the data when the user enters a venue where a performance is held and the portable device obtains at the venue the data identifier corresponding to the performance." (Office Action at page 8, beginning of indented paragraph).

In a section "Response to Arguments," the Office Action states that the claimed feature of "wherein the portable device stores the data identifier when the user enters a venue where a performance is held" can be interpreted as that a portable device stores data identifier when the user enters a venue where the performance is held. The Office Action further states that the claimed feature of "the portable

device obtains at the venue site the data identifier corresponding to the performance" is interpreted as the portable device, at the live event site, obtains data identifier such as program title, program identifier, program time, etc. in response to program guide updating or in response to user request (Office Action at pages 2-3).

Somewhat related to comments made in the "Response to Arguments" section (top of page 3), the Office Action states,

"the remote access device can obtain data identifier at any locations outside the house in response to <u>user input/selection</u> to control functions of recording device, to request particular data, or in response to <u>update information</u> (see include, but not limited to, E208: paragraphs 0017-0019, 0071, 0092, 0107, 0111)." (bottom of page 8).

Applicant submits that the capability of the remote access device of Ellis '831 to obtain a data identifier at any location outside the house is contrary to the present invention that requires a data identifier that is supplied from the performance site/venue where the performance is held. (see pages 10-11 of the original specification; "The identifier is …magnetically or electronically written at an entrance gate when the portable device is a card-type entrance ticket"). The data identifier of the present invention enables the storing means of a data recording device to store data provided a condition that a data identifier provided with the data coincides with the data identifier supplied at the venue (see page 13, the data identifier "functions as a key necessary for later obtaining accurate record data from the broadcasting system"; see also decision block S6 in Fig. 5).

In order to clarify the intended meaning of the claimed "data identifier," independent claims 1 and 7 have been amended to indicate that the data identifier corresponds to a performance and that the data identifier is obtained magnetically, electronically or by radio waves from an entrance gate of the venue of the performance (see page 11, lines 11-12, 15-16). In other words, the claims recite that the data identifier identifies the performance and verifies attendance at the venue where the performance is held. Thus, the data identifier of the present invention is one that identifies the performance, requires attendance at the performance, and is a necessary criteria for storing data in a storing means of the data recording device.

To the contrary, the guide system of Ellis '831 includes a remote access device that can obtain a data identifier at any location outside the house by user input/selection or in response to update information. In other words, the alleged data identifier of Ellis '831 is not obtained magnetically, electronically or by radio waves from an entrance gate of a venue, and subsequently does not identify the performance and require attendance at the performance.

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In the present invention, if a data identifier corresponding to a performance is not obtained from an entrance gate of a venue where the performance is held, the storing means of the data recording device will not store data having a data identifier, because the necessary data identifier will not be present for the comparison.

Furthermore, the Office Action at page 9 describes a scenario that involves a user attending a real time sport event or concert, where "information of the real time event is entered at the real time event site and stored in the remote access device." The Office Action presents a conclusion which states that it would have been obvious that a portable device stores a data identifier when the user enters the venue where a performance is held "to allow user at the real time event to record a data identifier of real time event in storage device without memorize it." Applicant submits that the example scenario is not supported by the disclosure in Ellis '831.

The allegation that a user could input a data identifier before or during an event appears to come from the fact that the remote device is portable (e.g., a portable computer, PDA, etc.). Upon reviewing all of the sections referred to in the Office Action with regard to a real time event (E831 at paragraphs 0091, 0186, 0245), Applicant found that the reference only discloses that a live event can be viewed based on data that is distributed from a remote source, such as television distribution facilities 16, niche hubs (para. 0186), a local hub, server, or Web server (para. 0245). Applicant found no disclosure in Ellis '831 of a user entering the real-time performance site and the remote access device storing a data identifier at the performance site, as alleged. Subsequently, the example scenario appears to be obtain from knowledge gleaned only from applicant's own disclosure, i.e. improper hindsight reasoning.

At least for these reasons, Applicant submits that the invention as required by claims 1 and 7 as amended are not taught or suggested by Ellis '831.

Furthermore in the claimed invention, the data identifier obtained from a gate at the venue of the performance is compared by a comparing means in the data recording device. The comparing means makes a comparison between a data identifier included in data received by a receiving means of the recording device and the data identifier obtained from the gate. The comparison is performed subsequent to receiving the data by the receiving means.

Regarding claim 9, the Office Action states that the limitation "comparing data identifiers after the program has been received by the recording device but before it is stored…" is not recited in the claim. But instead, the claim recites "…compares a data identifier included in the data received by the

receiving means..." (not received by recording device)." (section "Response to Arguments). Applicant disagrees.

Claim 7, from which claim 9 depends, recites "a data recording device which stores record data based on the data identifier from the portable device and the data identifier from the distribution medium, the data recording device including: (a) receiving means for receiving data distributed through the distribution medium." Because the receiving means is included in the data recording device, Applicant submits that it is not incorrect to refer to the data recording device as having received the data, albeit via the receiving means of the recording device.

Claim 7 also recites that the data recording device includes comparing means and storing means, as well as receiving means. Claim 9 further recites that the data recording device has data reproducing means. Applicant submits that the phrase "the comparing means compares a data identifier included in the data received by the receiving means" indicates that the comparison is performed subsequent to, or at least coincident with "data received by the receiving means." Claim 9 further recites "the storing means stores data having the corresponding data identifier according to the results of the comparison." Thus, according to the plain meaning of terms in the claim, by the phrase "when the data is not yet stored in the storing means," "a data identifier included in the data received by the receiving means" is compared by the comparing means after it is received but before it is stored. Thus, Applicant's argument accurately reflects the plain meaning of the claim. Accordingly, Applicant's position remains that Ellis '831 fails to teach or suggest at least the features recited in claim 9.

Applicant requests that the rejection be reconsidered and withdrawn.

§ 103(a) Rejection -- Ellis '831, Sehr

Claims 14, 19-30 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis '831 in view of U.S. Patent 6,999,936 (Sehr). Independent claim 19 has been amended. Applicant traverses this rejection based on the claims as amended.

With respect to claim 19, the Office Action expresses that,

"The limitation "the performance held at a performance venue" is interpreted as live time event such as sport, concert, etc. held at the real time event site (see include, but not limited to, figure 1A, paragraphs 0091, 0245)." (Office Action at page 18).

Sehr is relied on for teaching a portable device used as an entrance ticket for a performance held at a performance venue.

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However, claim 19 requires "portable device which is superior in carryability and has data identifier storing means for previously storing a second data identifier, the portable device obtaining the second data identifier as it is magnetically, electronically or by radio waves <u>transmitted</u> at the performance venue at a time when the user enters the venue and storing the obtained second data identifier in the storing means."

Applicant submits that Ellis '831 and Sehr, either alone or in combination, fail to teach at least the above stated claimed feature. Applicant submits that, for example, Sehr does not disclose its ticketing card being electronically or magnetically transmitted a data identifier from an entrance gate when the user enters the performance venue, the data identifier to be compared to a data identifier of a distribution medium.

Applicant requests that the rejection be reconsidered and withdrawn.

Conclusion

In view of the above remarks, it is believed that claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact **Robert Downs** Reg. No. 48,222 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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